

Nangia Andersen LLP



Indirect Tax Newsletter

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Advance Rulings & Judgements



Gujarat Appellate Authority for Advance Ruling held that artificial splitting of the contract into two separate orders to circumvent the provisions of law is not allowed and treated as one single contract

Brief Facts

- M/s. Shilchar Technologies Limited ('Appellant') are manufactures of Electronics and Telecom and Power & Distribution Transformers. The Appellant supplied 'Aluminum Foil Type Winding Inverter Duty Transformer' (herein referred to as 'IDT') for setting-up the Solar Power Generating System ('SPGS') to Adani Green Energy Ltd ('AGEL');
- The appellant further submitted that as per the technical specification for 'Aluminum Winding Inverter Duty Transformers' issued by M/s. AGEL services are also included therefore they got a separate contract with regard to Supervision of Erection, Testing and Commissioning charges for the said project and actual erection, commissioning and installation is not supposed to be carried out by them;
- The Gujarat Authority for Advance Ruling held that the appellant is liable for payment of GST on the total value of both the purchase order;
- Aggrieved by the above Appellate preferred appeal before the Appellate Authority to provide solution for "Whether supply of Aluminum Foil Type Winding Inverter Duty Transformer classifiable under Chapter Heading 8504 and parts of Transformer supplied/to be supplied for initial setting up of solar project falls under Sr. no. 234 in Schedule-I to Notification No. 01/2017-Central Tax (Rate) dated 28 June 2017 and liable to Central GST 2.5% along with State GST at the rate of 2.5%".

Observations

- Appellate Authority observed that supply of goods and supply of services are single and connected and to be used for same purpose viz. for supply and effective functioning of the IDT and trouble free operation of Solar Power Plant.
- It was observed that artificial splitting of the contract into two separate orders being placed by two different entities is merely an afterthought so as to circumvent the explanation inserted in entry No 234 of Notification No 01/2017 CT according to which, of the value of gross consideration 70% shall be deemed to be on account of goods and 30% deemed to be on account of service.

Decisions

- Appellate Authority concluded that the activities relating to supply of the transformers and the supervision of the erection, testing and commissioning of the transformers supplied by the appellant are inextricable and for the purpose of supply of transformer which would be used in initial setting up of the Solar Power Plant. The activities to be performed based on the two contracts discussed herein are interdependent and contribute to setting up of the Solar Power Generating System as per the Project Requirements.
- The appellant is liable for payment of GST on the total value of both the Purchase Order i.e. supply of goods and supply of services.

(Appellate Authority Advance Ruling (Appeal) No. GUJ/GAAAR/APPEAL/2023/01, dated 13 January 2023)

Maharashtra Appellate Authority for Advance ruling ('AAAR Maharashtra'): Services provided by M/s Worley Services India Private Limited to Vedanta Limited ('VL') are covered under SAC 998349 bearing description "Other technical and scientific services nowhere else classified" and will attract GST @18%.

Brief Facts

- M/s Worley Services India Private Limited is a part of Worley Parsons Limited, which is a global engineering company providing project delivery and consulting services to the resources and energy sectors and other complex process industry
- The Appellant is providing Project Management Consultancy ('PMC') services and Engineering, procurement, and construction management ('EPCM') services to local and international customers.
- The Appellant entered into an agreement with VL to provide PMC services where Appellant was required to continuously review, monitor, manage and control all aspects of the execution of the Projects on behalf of VL to complete it with quality, on time and within the approved cost. The Appellant is appointed to manage the Project, right from details to designing to commissioning and close out of Projects with VL.
- The Appellant has sought advance ruling on the following questions:
 - Whether the services provided by the appellant are classified under S. no. 24(ii) of heading 9986 of the Rate notification as 'Support services to exploration, mining or drilling of petroleum crude or natural gas or both' under SAC 998621 and attracts GST @ 12% in terms of S. no. 24(ii) of Rate notification.
 - Alternatively, whether the services provided by the appellant are classified under S. no. 21(ia) of heading 9983 of the Rate notification as 'Other professional, technical, and business services relating to exploration, mining or drilling of petroleum crude or natural gas or both' and attracts GST @ 12% in terms of S. no. 21(ia) of Rate notification.
 - Further if the services are not classifiable under the aforesaid entry, what would be the appropriate classification for the same and at what rate GST would be imposable?


- The Maharashtra Authority for Advance Ruling ('MAAR') ruled that professional, technical and business service supplied by the Appellant to VL are clearly covered under the residual entry no at S. no. 21(ii) of the Rate notification attracting tax at the rate of 18%.
- Dissatisfied with the ruling of MAAR, the Appellant further filed an appeal with the AAAR, Maharashtra.

Observations and Ruling

- Entry under SI. No. 24 (ii) of the Rate Notification covers only such activities or services which are used directly in the mining operations and which essentially entails the excavation of the land or sea to extract the valuable substances therefrom
- Activities covered under SAC 998621, are in the nature of physical performance or activities which are being directly used in the mining and extraction operations whereas the services provided by the Appellant are not so as the said services are in the nature of review, monitoring, management and supervision of the project works which are done towards realization of mining activities
- AAAR, Maharashtra agreed the observation made by MAAR wherein it was held that the services provided by the EPC company who are undertaking the actual infrastructural work for increasing the production capacity of their client, VL, would be classified under the entry at SI. No. 24(ii) of the Rate Notification, and not the Project Management Consultancy services provided by the Appellant which are not directly concerned with the mining operation.
- Services provided by the Appellant through their professionals are in the nature of professional and technical services as the said impugned services provided by them in deed require technically qualified and trained professionals and staffs.
- AAAR, Maharashtra held that the services of project management consultancy services provided by the Appellant would merit classification under the SAC 998349 bearing description "Other technical and scientific services nowhere else classified, attracting GST at the rate of 18% (CGST @9%+SGST @9%).

**[M/s Worley Services India Pvt. Ltd.-
MAH/AAAR/DS-RM/14/2022-23 dated 03
January 2023]**



A background image showing a group of business professionals in a meeting. One person in the foreground is holding a tablet, while others are looking at documents. The scene is dimly lit, with a warm glow from a light source on the left.

The Calcutta High Court held that mere usage of the words “willful suppression”, “mis-statement”, “intention to evade payment of duty” is not sufficient to hold an assessee guilty of such mis demeanors

Brief Facts

- M/s. EPC International Pvt. Ltd. (‘Petitioner’) was engaged in manufacture of certain products from “condensate” procured from M/s. Oil India Limited (classifiable under Tariff Sub-heading 2709 0000 at Nil rate;
- The Condensate was processed through distillation process for refining the condensates (by removing impurities) without ad-mixture with any other materials. The assessee sold the distilled condensates to various customers under the cover of Central Excise invoices, appropriately classified the distilled condensate under tariff sub-heading 2709 0000 at Nil rate of duty considering that “condensates” and “distilled condensates” are one and the same and having same composition;
- The Central Excise Authorities (‘Revenue’) alleged that the Petitioner clandestinely manufactured and cleared “Special Boiling Point Spirit” classifiable under Central Excise Tariff Sub-heading 2710 1213 commercially known as ‘EPC solvent’ during the period from 2011-12 to 2015-16 (up to October 2015) without payment of Central Excise Duty. Subsequently, a Show Cause Notice (‘SCN’) was issued on the Petitioner. The contentions of the Petitioner were rejected and the Revenue confirmed the proposal in SCN;
- The Order-in -original (‘O-I-O’) so issued was challenged by the Petitioner by way of writ wherein the issue of lack of jurisdiction at the time of issuance of SCN invoking extended period of limitation and whether the product had undergone any change was challenged before the Writ Court;
- The Writ Court held that the O-I-O was an appealable order and the Writ Court cannot act as an appellate authority and substitute its findings upon the reappraisal of the facts and evidence unless a finding is demonstrated to be perverse.
- The current Writ petition was filed challenging the order passed by the Writ Court;

Observations

- The Calcutta High Court relying on the judgement of the Supreme Court in ‘M/s. Whirlpool Corporation vs. Registrar of Trademarks, Mumbai’ observed that the instant case qualified under the contingencies since it was filed questioning the jurisdiction of the authority to issue the show cause notice by invoking the extended period of limitation;
- Further, the appellants had raised the contention that when the dispute is a classification dispute of a product, extended period of limitation cannot be invoked;
- The Calcutta High Court while relying on various judgements observed that extended period of limitation is applicable only when there is some positive act other than mere inaction or failure on the part of the manufacturer. Further, there must be conscious or deliberate withholding of the information by the manufacturer to invoke larger period of limitation. The issue of classification is technical in nature and therefore *mens rea* to evade payment of duty cannot be alleged and therefore extended

period of limitation cannot be invoked and no penalty could have been levied and can be levied on the appellants therein even in respect of demand for normal period which was also affirmed by the Supreme Court;

- The High Court observed that mere usage of the words “willful suppression”, “mis-statement”, “intention to evade payment of duty” is not sufficient to hold an assessee guilty of such mis demeanors. There should be sufficient material available on record to establish these allegations and essentially *mens rea* has to be established before the conclusion is arrived at;
- Relying upon the judgement of Supreme Court in State of Punjab vs. Bhatinda District Cooperative Milk P. Union Limited, the court held that the question of limitation is a jurisdictional question and writ petition was maintainable.

Decision

- The High Court concluded that the adjudication order is flawed especially on the ground of limitation and allowed the appeal.

[M/s. EPC International Pvt. Ltd. & Anr v. Union of India and Anr [TS-18-HC-2023(CAL.)-EXC, dated 20 January 2023]

GST Clarifications and Updates



Circular issued by CBIC for clarifying GST rates and classification of certain goods based on recommendation of GST Council

- Basis representations received regarding clarification on applicable six-digit HS code for 'Carbonated Beverages of Fruit Drink' or 'Carbonated Beverages with Fruit Juice', CBIC clarified that the applicable six digit HS code is HS 2202 99 attracting GST at the rate of 28% and Compensation Cess at the rate of 12%

It has further been clarified that the said entries of 'Carbonated Beverages of Fruit Drink' or 'Carbonated Beverages with Fruit Juice', cover all such carbonated beverages that contain carbon dioxide, irrespective of whether the carbon dioxide is added as a preservative, additive, etc;

- CBIC clarified that Compensation Cess at the rate of 22% is applicable on Motor vehicles, falling under heading 8703, which satisfy the following four specifications:

- they are popularly known as Sports utility Vehicles ('SUVs');
- their engine capacity exceeds 1,500 cc;
- their length exceeds 4,000 mm; and
- their ground clearance is 170 mm and above

- IGST rate on specified goods (as listed in Notification No. 3/2017-Integrated Tax (Rate), dated 28 June 2017) when imported for specified purpose (like Petroleum operations/Coal bed methane operations) was increased to 12% from 5%, vide Notification No. 8/2022-Integrated Tax (Rate), dated 13 July 2022

CBIC has clarified that in case such specified goods which are eligible for IGST rate of 12% mentioned above but are generally chargeable to a GST rate of 5% or any other IGST rate, the importer can claim the benefit of the lower rate.

DGFT Updates

Directorate General of Foreign Trade ('DGFT') notifies revised Appendix 4R under Para 4.59 of the Foreign Trade Policy 2015-20 ('FTP 2015-20'):

- Revised RoDTEP (Remission of Duties and Taxes on Exported Products) Appendix 4R has been notified after incorporating changes recommended by RoDTEP Committee in relation to apparent errors and anomalies in 432 HS codes and it will be applicable for exports made from 16 January 2023 to 30 September 2023.

[DGFT Notification No-53 /2015-20 dated 9 January 2023]

Amendment made under Appendix 2T (List of Export Promotion Councils / Commodity Boards/ Export Development Authorities) of Appendices and Aayat Niryat Forms of the FTP 2015-20

- Mobile and Electronic Devices Export Promotion Council ('MEDEPC') has been included in the Appendix 2T of FTP 2015-20 for issuing Registration-Cum –Membership Certificate ('RCMC') for Smartphones, Other Mobile phones, Smart watches, monitors, projectors and components/accessories for these electronic goods with immediate effect.

[Public Notice No- 49/2015-20 dated 9 January 2023]

DGFT simplifies Composition Fee for Export Obligation extension under Advance Authorization Scheme

- DGFT has notified the amended rules for calculation of Composition Fee for extending Export Obligation under Advance Authorization Scheme by amending Para 4.42 of Handbook of Procedures (2015-20) vide Public Notice No.52/2015-20 dated 18 January, 2023.

[Public Notice No- 52/2015-20 dated 18 January 2023]

DGFT provides one time relaxation from maintaining Average Export Obligation and option to avail extension in Export Obligation Period for specified Export Promotion Capital Goods ('EPCG') authorizations

- On account of COVID-19 pandemic, subject to fulfilment of certain conditions one time relaxation from maintaining Average Export Obligation and option to avail extension in Export Obligation Period for specified EPCG authorizations shall be provided.

[Public Notice No- 53/2015-20 dated 20 January 2023]

Withdrawal of Export Obligation Discharge Certificate ('EODC') online monitoring system of Advance /EPCG Authorizations

- The DGFT has issued Trade Notice No. 24/2022-23 dated 12 January 2023 regarding the withdrawal of the EODC Online Monitoring System for Advance/EPCG Authorizations with immediate effect.

[Trade Notice No- 24/2022-23 dated 12 January 2023]



Custom Updates



Notified Agartala Airport as Customs Airport

- CBIC has notified Agartala airport situated in Tripura, as Customs Airport for the purpose of Unloading and loading of baggage.

[Notification No. 01/2023-Customs (N.T), dated 04th January 2023]

Customs (Assistance in Value Declaration of Identified Imported Goods) Rules, 2023

- CBIC has notified the Customs (Assistance in Value Declaration of Identified Imported Goods) Rules, 2023

[Notification No. 03/2023-Customs (N.T), dated 11th January 2023]

Exemption from levy of Customs Duty on import of COVID-19 Vaccine by Central or State Governments till 31 March 2023

- Government exempt COVID -19 vaccines from Customs Duty when imported into India by Central or State Governments until 31 March 2023.

[Notification No. 01/2023-Customs, dated 13th January 2023]

Extends levy of Anti-Dumping Duty (ADD) on Fishing Nets originating in or exported from People's Republic of China

- Government has extended the levy of ADD on Fishing Nets originating in or exported from China to India until 9 July 2023.
- ADD was levied on 10 April 2018 via a notification by CBIC for a period of 5 years from the date of such notification, which has now been extended until 9 July 2023.

[Notification No. 01/2023-Customs (ADD), dated 06th January 2023]

Compliance Calendar

S. No.	Compliance Category	Compliance Description	Frequency	Due Date	Due Date falling In September 2022
1	Form GSTR-1 (Details of outward supplies)	Registered person having aggregate turnover more than INR 5 crores and registered person having aggregate turnover up to INR 5 crores who have not opted for Quarterly Returns Monthly Payment ('QRMP') Scheme	Monthly	11 th day of succeeding month	For Tax Period January 2022 - 11 February 2023
2	Form GSTR-3B (Monthly return)	Registered person having aggregate turnover more than INR 5 crores and registered person having aggregate turnover up to INR 5 crores who have not opted for Quarterly Returns Monthly Payment ('QRMP') Scheme	Monthly	20 th day of next month	For Tax Period January 2022 - 20 February 2023
3	QRMP Scheme				
	Invoice furnishing facility ('IFF')	<ul style="list-style-type: none"> Optional facility to furnish the details of outward supplies under QRMP Scheme 	Monthly	1 st day to 13 th day of succeeding month	For Tax Period January 2022 – 1 to 13 February 2023
	Form GST PMT-06 (Monthly payment of tax)	<ul style="list-style-type: none"> Payment of tax in each of the first two months of the quarter under QRMP Scheme 	Monthly	25 th of the succeeding month	For Tax Period January 2022 – 25 February 2023
	Form GSTR-1 (Details of outward supplies)	<ul style="list-style-type: none"> Registered person having aggregate turnover up to INR 5 crores who have opted for QRMP Scheme 	Quarterly	13 th day of the subsequent month following the end of quarter	For the quarter January 2022 to March 2022 – 13 April 2023

	Form GSTR-3B (Monthly return)	<ul style="list-style-type: none"> Registered person with aggregate turnover up to INR 5 crore (opted for QRMP Scheme) having place of business in Group 1 states¹ and union territories Registered person with aggregate turnover up to INR 5 crore (opted for QRMP Scheme) having place of business in Group 2 states² and union territories 	Quarterly	<p>22nd day of the subsequent month following the end of quarter</p> <p>24th day of the subsequent month following the end of quarter</p>	<p>For the quarter January 2022 to March 2022 – 22 April 2023</p> <p>For the quarter January 2022 to March 2022 – 24 April 2023</p>
4	Form GSTR-6 (Return for input service distributor)	<ul style="list-style-type: none"> Return for input service distributor 	Monthly	13 th of the succeeding month	For Tax Period January - 13 February 2022



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